

# Exhibit 219

**From:** [REDACTED] on behalf of [REDACTED]  
**To:** Baird, Elizabeth; Szczepanik, Valerie  
**CC:** [REDACTED]  
**Sent:** 2/14/2019 5:02:05 PM  
**Subject:** CONFIDENTIAL - Coinbase New Asset Update  
**Attachments:** XRP Legal DALG (SEC).pdf

**CONFIDENTIAL**  
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Lizzie and Val:

I'm writing to follow up on our meeting last week during which we discussed our evaluation of XRP and our impending decision whether to list that asset on Coinbase. In consultation with outside counsel, we have completed our legal review of XRP using the risk matrix that we discussed with you. For your reference, a copy of our XRP legal assessment is attached.

As you will see, XRP has an elevated legal risk score of 4.25 under our scoring system, which, per our internal DALG process, prompted heightened scrutiny and diligence of XRP by both the legal department and senior leadership. Our review process concluded that XRP may pose an elevated risk of being deemed a security in comparison to other digital assets that we currently support. Our review process also identified, in consultation with outside counsel, credible arguments that XRP is not a security and thus may permissibly be listed on our U.S. trading platform. After deliberation and review of our internal DALG materials (including the attached legal assessment) this week, our senior leadership team has determined to approve the listing of XRP in the United States.

In the interest of full transparency, we wanted to share this information with you and let you know that we intend to announce our decision to list XRP on or around February 19 and to begin to support XRP on Coinbase shortly thereafter. As discussed, we look forward to meeting again soon to walk you through our scoring process and please let us know if there is any particular asset you would like to discuss at that meeting.

Thanks,

[REDACTED]  
Coinbase  
San Francisco, CA, USA  
m: [REDACTED]

*Coinbase requests FOIA protection of this e-mail and its attachment. We have included language to ~~that effect~~ in the attachment and will also send a corresponding request to the SEC Office of FOIA Services.*

**FOIA CONFIDENTIAL TREATMENT REQUESTED  
BY COINBASE**

**CBASE\_SEC\_000007438**

HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

SEC-LIT-EPROD-000038987

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## EXHIBIT B

## Digital Asset Launch Group -- Ripple (XRP)

## A. Legal Rating Criteria

Howey score (1-5): 4.25

Overall legal score (1-5): 4.25

Considerations: Howey score

## Rating description:

The asset under consideration will be assigned an overall legal score on a scale of 1-5. That score will be based on an analysis of the Howey test and related Hinman factors, as set forth below, in addition to any other relevant legal considerations (e.g., the likelihood of the asset being deemed a derivative, the likelihood of the asset being deemed a note, the lack of an opinion/memorandum from outside counsel, etc.).

If the Howey scaled score is the only relevant consideration, the overall score will be based on the following legend:

Howey score legend:

1	3 prongs have scores below 100
2	2 prongs have scores below 100
3	1 prong has a score below 100, and no prong is above 150
3.5	3 prongs are 100 or greater, and one or more prongs is above 150
4	All 4 prongs are 100 or greater, but no prong is above 150
4.25	All 4 prongs are 100 or greater, and no more than one prong is above 150
4.5	All 4 prongs are 100 or greater; two prongs are above 150, or one prong is above 200

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5	All 4 prongs are 100 or greater; three prongs are above 150, or one or more prongs are above 250
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**B. Other Securities Analysis**

1. Does the asset have characteristics of other instruments that may be deemed to be securities, such as a note?<sup>1</sup> For example, does the asset evidence indebtedness to another person? Is the asset identified or marketed as debt? Does the asset confer on the holder a right to payment of interest at a time of stated maturity?

No.

2. If the instrument has the characteristics of a note, does it have sufficient "family resemblance" as set forth in Reves to notes that are not considered securities?<sup>2</sup>

In Reves v. Ernst & Young, the Supreme Court held that a note "is presumed to be a 'security,' and that presumption may be rebutted only by a showing that the note bears a strong resemblance (in terms of [] four factors[]) to one of the enumerated categories of instruments."<sup>3</sup>

Not applicable.

<sup>1</sup> As set forth in Section 3(a)(10) of the Securities Exchange Act, a "security" includes a note "which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited." 15 U.S.C. 78c(a)(10). The corresponding definition of a note in the Securities Act does not have the same exclusion for notes with a maturity of less than nine months. See 15 U.S.C. 77b(a)(1). This definition is to be applied unless "the context otherwise requires." 15 U.S.C. 78c(a); 15 U.S.C. 77b(a)(1).

<sup>2</sup> In determining whether a note is sufficiently similar to one of these enumerated categories to be exempt from the securities laws, the Reves test considers (1) the motivation of the buyer and the seller to enter into the transaction, e.g., if the seller's purpose is to raise money for the general use of a business enterprise or to finance substantial investments and the buyer is interested primarily in the profit the note is expected to generate; (2) the "plan of distribution" of the instrument, to determine whether it is an instrument in which there is "common trading for speculation or investment;" (3) the reasonable expectations of the investing public; and (4) whether some factor such as the existence of another regulatory scheme significantly reduces the risk of the instrument, thereby rendering application of the Securities Acts unnecessary. Reves v. Ernst & Young, 494 U.S. 56, 67 (1990).

Those enumerated categories of notes that are not considered securities, as set forth by the United States Court of Appeals for the Second Circuit in two prior decisions, are (1) a note delivered in consumer financing; (2) a note secured by a mortgage on a home; (3) a short-term note secured by a lien on a small business or some of its assets; (4) a note evidencing a "character" loan to a bank customer; (5) short-term notes secured by an assignment of accounts receivable; (6) a note "which simply formalizes an open-account debt incurred in the ordinary course of business (particularly if, as in the case of the customer of a broker, it is collateralized);" or (7) notes evidencing loans by commercial banks for current operations. See Exchange National Bank of Chicago v. Touche Ross & Co., 544 F.2d 1126, 1137 (2d Cir. 1976) (categories 1-6); Chemical Bank v. Arthur Andersen & Co., 726 F.2d 930, 939 (2d Cir. 1984) (adding category 7).

<sup>3</sup> 494 U.S. 56, 67 (1990).

**C. Derivatives Analysis****1. What likelihood does the asset have of being considered a derivative?**

There is a low likelihood of XRP being considered to be a derivative.

**2. Does the asset allow counterparties to hedge or speculate on price movements on an asset or index without owning the asset or index outright?**

No.

**D. Fraud Analysis****1. Does the enterprise and the asset ostensibly have a legitimate purpose?**

Yes. XRP Ledger is a decentralized cryptographic ledger powered by a network of peer-to-peer servers. Unlike other networks, the XRP Ledger supports a decentralized currency exchange functionality that supports the issuance and trading of currencies. For this reason, the primary functionality of the XRP Ledger is as a payments transmission network. While the XRP Ledger supports the use and transmission of XRP, it also supports the use and transmission of other digital assets.

XRP is the native cryptocurrency of the XRP Ledger. All accounts on the XRP Ledger can send or receive XRP to/from each other; and a user needs an account in order to send or receive XRP. In this way, XRP can function as a bridge currency in transactions involving different currencies. In order to use the functionality of the XRP Ledger, XRP is required to (1) maintain an account reserve; and (2) to pay transaction fees.

**2. Has the asset or issuer ever been the subject of a law enforcement action or regulatory investigation?**

Yes. In May 5, 2015, the Financial Crimes Enforcement Network (FinCEN) announced that it had levied a fine of \$700,000 on Ripple and XRP II, LLC for violating various elements of the Bank Secrecy Act (BSA) by acting by acting as a money services business (MSB) and selling XRP without registering with FinCEN, and by failing to implement and maintain an adequate anti-money laundering (AML) program designed to protect its products from use by money launderers or terrorist financiers. XRP II later assumed Ripple Labs' functions of selling virtual currency and acting as an MSB. FinCEN found that XRP II willfully violated the BSA by failing to implement an effective AML program, and by failing to report suspicious activity related to several financial transactions.

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This action was undertaken in connection with the U.S. Attorney's Office for the Northern District of California, which also entered into a settlement agreement with Ripple Labs and XRP II, LLC. In that settlement, the companies resolved possible criminal charges and forfeited \$450,000. The \$450,000 forfeiture in that action was credited to partially satisfy FinCEN's \$700,000 civil money penalty.

**3. Does the issuer have experience or expertise related to the enterprise it is developing and the asset to be distributed?**

Yes. The CEO of Ripple is Brad Garlinghouse. Prior to Ripple, Garlinghouse served as the CEO of the file collaboration service Hightail. From 2009 to 2012 he was President of Consumer Applications at AOL and, from 2003-2009, he held various executive positions at Yahoo!, including Senior Vice President. The CTO is David Schwartz, who is one of the original architects of the Ripple consensus network. Prior to joining Ripple, Schwartz was CTO for WebMaster Incorporated, and developed encrypted cloud storage and enterprise messaging systems. The former CEO and co-founder of Ripple, and the current Executive Chairman of Ripple's Board of Directors, is Chris Larsen. Prior to Ripple, Larsen co-founded and served as CEO of Prosper and E-LOAN, a publicly traded online lender.

**Attachment A -- New Asset Fact Sheet****1. Asset name and symbol**

Ripple (XRP)

**2. Issuing company**

Ripple. The company was originally named OpenCoin, and then Ripple Labs.

**3. Description of asset**

There are three key components of the Ripple ecosystem: (1) XRP Ledger, a decentralized cryptographic ledger powered by a network of peer-to-peer servers; (2) XRP, the native asset of the XRP Ledger; and (3) RippleNet, a payments platform that uses XRP and the XRP Ledger through various products and applications. The XRP Ledger, XRP and RippleNet were all initially developed by Ripple.

**XRP Ledger**

XRP Ledger is a decentralized cryptographic ledger powered by a network of peer-to-peer servers. Unlike other networks, the XRP Ledger supports a decentralized currency exchange functionality that supports the issuance and trading of currencies. For this reason, the primary functionality of the XRP Ledger is as a payments transmission network. While the XRP Ledger supports the use and transmission of XRP, it also supports the use and transmission of other digital assets.

The XRP Ledger validation process begins when applications that use the XRP network, such as wallets and electronic trading platforms, sign and send transactions to the XRP network for verification and inclusion in the XRP Ledger. Since there is always a degree of latency in this process, not all participants in the XRP network evaluate the same set of transactions at the same time. To ensure that transactions are ordered and processed consistently across the network, thereby eliminating the "double spend" issue, the XRP Ledger uses a consensus protocol based on supermajority vote of validating nodes (rather than proof of work or proof of stake). The consensus protocol is a defined set of rules that all participants follow, so every participant can agree on the same series of events and their outcomes at any point in time. A new version of the XRP Ledger is created every several seconds.

The primary actors in the XRP Ledger consensus process are "validators", which are servers run by different parties that are specifically configured to actively participate in the consensus process. In order to act as a validator, the server needs to run rippled, the software that manages the XRP Ledger. A server that runs rippled may act as a validator, or it may follow the network with a local copy of the ledger (stock server), or it may operate in stand-alone mode for testing.



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Once a transaction has been submitted to the XRP network and accepted, each server uses the last validated ledger as a starting point. Accepted transactions are known as "candidates." Servers propagate sets of candidate transactions throughout the network until a supermajority of chosen validators agree on the same set of transactions. The supermajority threshold requires that at least 80% of peers must agree on the transaction. During consensus, each server evaluates proposals from a specific set of validators, known as that server's trusted validators, or "Unique Node List" (UNL). Trusted validators represent a subset of the XRP network validators which, when taken together, are "trusted" not to collude in an attempt to defraud the server evaluating the proposals. Trusted validators are chosen based on the expectation that they will not collude in a coordinated effort to falsify data that is relayed to the network; each individual chosen validator need not be trusted.

Through the consensus process, validators each propose a set of new transactions to be included in the next ledger version. Validators add transactions to their proposals if most of the validators that they trust proposed those transactions, and remove transactions if most of the validators that they trust did not propose those transactions. (Removed transactions are often included in the next proposed ledger version.) The validation process verifies that the servers obtained the same results and declares a ledger version final. When the consensus process is completed, each server independently computes a new ledger from the agreed-upon set of transactions, following the same rule.

Anyone can run a validator, although Ripple operates a "default" UNL list of trusted validators that it recommends. Ripple also provides "recommendations and best practices" as to the selection of validators. Participants may also build their own UNL list of trusted validators. The consistency of the XRP network depends on different servers choosing lists that have a high degree of overlap, which is one reason why Ripple publishes a list of recommended validators. Only validators that are included on a UNL list are able to participate in the process of ordering transactions on the XRP Ledger.

**XRP**

XRP is the native cryptocurrency of the XRP Ledger. All accounts on the XRP Ledger can send or receive XRP to/from each other; and a user needs an account in order to send or receive XRP. In this way, XRP can function as a bridge currency in transactions involving different currencies. In order to use the functionality of the XRP Ledger, XRP is required to (1) maintain an account reserve; and (2) to pay transaction fees.

The purpose of the account reserve is to protect the XRP Ledger from growing excessively large as the result of spam or malicious usage. There are two kinds of account reserves -- the Base Reserve and the Owner Reserve. The Base Reserve is the minimum amount of XRP that is required for every address in the XRP ledger, and is currently 20 XRP. The Owner Reserve is an increase in the reserve requirement for each object that the address owns in the XRP Ledger, and is currently 5 XRP. Objects include offers (an order to exchange currencies on the XRP Ledger), the RippleState (two trust lines between accounts in a non-default state), and a SignerList (a list of parties that, as a group, are authorized to sign a transaction in place of an individual account).



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If an address holds less XRP than its current reserve requirement, it cannot send new transactions that would transfer XRP to others, or increase its own reserve. Even so, the address continues to exist on the XRP Ledger and can send other transactions as long as it has enough XRP to pay the transaction fee. The address will be able to send all types of transactions again if it receives enough XRP to meet its reserve requirement, or if the reserve requirement decreases to less than the address's XRP holdings. When an address is below the reserve requirement, it can acquire more XRP through the OfferCreate functionality.

Transactions on the XRP Ledger also require the use of XRP to pay transaction fees; that XRP is destroyed after the transaction is completed. Every signed transaction must include the transaction cost in the fee field, which cannot be changed without invalidating the signature. The transaction fee can either be specified by the signer of the transaction, or can be populated by *rippled* or the Ripple API, which checks current transaction costs and adds a fee value. Transactions with an insufficient XRP balance will be rejected. Every transaction destroys the exact amount of XRP specified by the Fee field, even if the specified amount is more than the current minimum transaction cost for any part of the XRP network.

In addition to the account reserve and transaction fees, some advanced features of the XRP Ledger, such as Escrow and Payment Channels, only work with XRP. For example, the XRP Ledger supports a decentralized exchange functionality, which merges the order books of two issued currencies with XRP order books to create synthetic combined order books.

The amount of the account reserve and transactions fees may be adjusted, from time to time, by a vote of validators. Specifically, validators indicate their voting preference every 256th ledger, which is called a "flag" ledger. In the ledger immediately before the flag ledger, each validator whose account reserve or transaction cost preferences are different than the current network setting distributes a "vote" message alongside its ledger validation, indicating the values that validator prefers. In the flag ledger itself, validators receive and take note of the votes from other validators they trust. After counting the votes of other validators, each validator attempts to compromise between its own preferences and the preferences of a majority of validators it trusts. If a compromise is possible, the validator inserts a pseudo transaction into its proposal for the ledger that follows the flag ledger. Other validators who want the same change insert the same pseudo-transaction into their proposals for the same ledger. (Validators whose preferences match the existing network settings do nothing.) If a pseudo transaction survives the consensus process and is included in a validated ledger, then the new transaction cost and reserve settings denoted by the pseudo transaction take effect starting with the following ledger. There are maximum possible values for these fees, which are limited by internal data types stored in the Fee Settings object type of *rippled*.

### RippleNet

RippleNet is a payments platform that consists of a network of banks, payment providers and other parties. The stated goal of RippleNet is to efficiently send and receive payments around the world. RippleNet consists of two kinds of users: (1) network users, such as small banks and payment providers, who only send payments; and (2) network members who process payments and source liquidity. According to Ripple, the

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defining characteristics of RippleNet are (1) its use of the RippleNet Rulebook, which provides operational standardization by specifying the rights, obligations and business rules of network participants; and (2) its use of products developed by Ripple to facilitate transactions on the XRP Ledger: xCurrent, xRapid, and xVia.

xCurrent allows network members to provide real-time payment processing and settlement through pre-validation. xRapid allows network members to source liquidity. xVia is an API solution that allows network users to originate global banking payments. The “featured” digital asset of xRapid is XRP; while xRapid was initially developed to support other digital assets, the functioning of those other digital assets on xRapid has proven to be sub-optimal in practice. xVia and xRapid support a variety of digital assets.

The application of xRapid involves the following sequence: (1) a financial institution that has an account with an exchange that supports XRP initiates a payment in U.S. dollars via xRapid, and this payment is instantly converted into XRP on the exchange; (2) the payment amount in XRP is settled over the XRP Ledger; (3) the foreign platform instantly converts the XRP into fiat, which is then settled into a destination bank account.

In May 2018, Ripple announced the results from several early xRapid pilots. According to Ripple, participating financial institutions saw a savings of 40-70% compared to what they normally paid foreign exchange providers, and an average xRapid payment took just over two minutes, compared to the current average of 2-3 days when sending cross-border payments. In October 2018, Ripple announced that xRapid was commercially available and was moving into production with customers including MercuryFX, Cuallix and Catalyst Corporate Federal Credit Union. As of November 2018, Catalyst Corporate Credit Union, MercuryFX, and Cuallix have publicly announced their use of XRP in payment flows through xRapid to provide liquidity solutions for their cross-border payments. MoneyGram, IDT, Cambridge Global Payments, Currencies Direct and Viamericas have piloted xRapid.

#### **4. Description of development team**

The CEO of Ripple is Brad Garlinghouse. Prior to Ripple, Garlinghouse served as the CEO of the file collaboration service Hightail. From 2009 to 2012 he was President of Consumer Applications at AOL and, from 2003-2009, he held various executive positions at Yahoo!, including Senior Vice President. The CTO is David Schwartz, who is one of the original architects of the Ripple consensus network. Prior to joining Ripple, Schwartz was CTO for WebMaster Incorporated, and developed encrypted cloud storage and enterprise messaging systems. The former CEO and co-founder of Ripple, and the current Executive Chairman of Ripple's Board of Directors, is Chris Larsen. Prior to Ripple, Larsen co-founded and served as CEO of Prosper and E-LOAN, a publicly traded online lender.

#### **5. Type of token / blockchain (e.g., ERC20)**

Stand-alone blockchain.

#### **6. Method of asset distribution (Mined, ICO, etc.)**

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**Was the distribution capped? What was the allocation of the asset? Were there any restrictions on transferring the asset?**

100B XRP were created as part of the genesis ledger in January 2013. Of that 100B, 80B XRP was allocated to Ripple and 20B XRP was split between the three company founders.

Since that time, Ripple and a wholly-owned subsidiary, XRP II, LLC, has periodically sold a portion of its allocated supply through direct institutional and programmatic sales. Ripple currently owns about 60B XRP. On May 16, 2017, Ripple announced that it was placing 55B XRP into a series of escrows by the end of 4Q17 to provide a level of supply predictability. Since the escrow was established, Ripple has returned the majority of released XRP back into escrow; however, Ripple has sold a portion of that XRP through direct institutional and programmatic sales. In addition, Ripple has previously indicated that it may also use this released XRP as “incentives to market makers to offer tighter spreads for payments.”

**7. Does the asset confer ownership rights or profit-sharing on holders?**

No.

**8. Were there marketing materials or terms and conditions in connection with the sale of the asset? If so, what representations were made?**

At this time, we do not have marketing materials that Ripple used in connection with its sales of XRP. However, we did review various public statements made by officers and employees of Ripple about XRP in connection with this analysis.

**9. Did the issuer take affirmative steps to create and support a secondary market? (E.g., seeking to list the asset, supporting its value in the secondary market, etc.)**

Yes. As noted above, Ripple continues to own approximately 60B XRP, and has placed 55B XRP in escrow, with 1B XRP released monthly. This 55B XRP is locked in a smart contract on the Ripple network. Every month, the smart contract releases 1B XRP from this escrow to addresses controlled by Ripple Labs. Ripple Labs has discretion over how it uses this XRP, e.g., it can sell this XRP to finance its business, and returns whatever it doesn't use of the 1B back to the smart contract (i.e., back to escrow.) XRP that is released from escrow and that is not used by Ripple is returned to escrow by Ripple. Since the escrow was established, Ripple has returned the majority of released XRP back into escrow; however, Ripple has sold a portion of that XRP through direct institutional and programmatic sales. In addition, Ripple has previously indicated that it may also use this released XRP as “incentives to market makers to offer tighter spreads for payments.” In addition, Ripple has affirmatively sought to list XRP on various exchanges.

**10. Indications of Decentralization**

**A. Are there decentralized governance initiatives?**

A key component of the XRP Ledger ecosystem are validators. A “trusted” validator can validate transactions, enable/veto amendments (such as the adoption of the Flow Amendment in October 2016, which replaced the existing payment processing engine with a more robust and efficient rewrite), and modify fees. If a quorum of validators agrees on a change, they can apply a change that takes effect thereafter. Specifically, the XRP Ledger requires 80 percent of validators on the entire network, over a two-week period, to continuously support a change before it is applied. In contrast to Bitcoin and Ethereum, where one miner could have 51 percent of the hashing power, each Ripple validator only has one vote in support of an exchange or ordering of a transaction.

Ripple initially controlled the majority of validators, including the trusted validators that were placed on its “default” UNL list. In maintaining its default UNL list, Ripple monitors the performance of validators on the XRP Ledger against a specific set of criteria, including the validator’s consensus agreement rate, uptime, verification of identity and public attestation. While Ripple maintains a default UNL list, Ripple users retain the ability to change their UNLs and the corresponding validators that they trust, e.g., if a party controlling a large number of validators abused that power to propose changes that served only its own interests.

Ripple has also taken various steps to attempt to decentralize the XRP Ledger by diversifying the validators. In Phase One, Ripple attempted to diversify validators by identity, location, hardware and software, growing from 25 validator nodes, with 5 of those trusted nodes owned and managed by Ripple, to over 70 validator nodes. As part of Phase Two, which started in 4Q17 and is progressing over the following 18 months, for every two attested third-party validating nodes that meet the criteria for being included on Ripple’s UNL list, Ripple will remove one validating node operated by Ripple, until no entity operates a majority of trusted nodes on the XRP Ledger. In a post dated August 22, 2018, Ripple’s CTO noted that, of the 150 validators on the Ripple network as of the time of writing, Ripple operated only 10. According to one tracker, there are currently 120 validators, and 93% of those validators are listed as non-Ripple validators.<sup>4</sup>

Similarly, the number of trusted validators that are controlled by Ripple (and which may be included on a UNL list) has steadily decreased. According to one tracker, there were 6 trusted validators on the “default” UNL list in February 2018, all of which were controlled by Ripple. By June 2018, there were 12 trusted validators on the default UNL list, with Ripple controlling 8 of those validators (67%). Currently, there are 23 trusted validators on the default UNL list, with Ripple controlling 7 of those validators (30%).<sup>5</sup>

**B. Is the code for the asset and/or network open-source? If so, what is the number of repositories, branches, unique contributors, commits, and pull requests on GitHub?<sup>6</sup>**

<sup>4</sup> <https://minivalist.cinn.app/>

<sup>5</sup> Id.

<sup>6</sup> Github defines a branch as a parallel version of a repository. A commit is an individual change to a file, which enables a record to be kept of what changes were made and by whom. A pull request is a proposed change to a

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The code that runs the XRP Ledger is *rippled*, which is open-source, and which is published on GitHub. Anyone may contribute code to *rippled* if they run a *rippled* server. According to the XRP Ledger development portal, Ripple “controls who has access to modify official versions of the *rippled* server source code, and it thoroughly audits all code.” For the *rippled* code, the tip of the master, release and develop branches contain a version-setting commit signed by a *rippled* developer.

There are currently 75 repositories for Ripple on GitHub. Those repositories include the Ripple developer portal, which has 2,297 commits, 26 releases and 29 contributors, and the daemon implementing *rippled* in C++, which lists 11,866 commits, 85 releases and 63 contributors. Of the 63 contributors, 8 are listed as being employees of Ripple Labs and are therefore “members” of the Ripple Labs GitHub organization, or have Ripple contact information. The greatest number of commits (4,248) are associated with David Schwartz (Ripple CTO).

The code of Ripple products, such as xVia, xCurrent, and xRapid, is not currently open-source.

## 11. Indications of Utility

### A. Is the platform currently functional? Can the asset currently be used on the platform?

Yes. Since January 1, 2018, daily transaction volumes have ranged from a low of 226,025 transactions (on October 21, 2018) to a high of 1,658,944 transactions (on January 16, 2018). Since January 1, 2018, the daily amount of transaction fees (in XRP) has ranged from a low of 1.63 XRP on December 25, 2018 (with an average fee of 0.0011 XRP) to a high of 106,349 XRP on May 22, 2018 (with an average fee of 0.1278 XRP).

As of November 2018, Catalyst Corporate Credit Union, MercuryFX, and Cuallix have publicly announced their use of XRP in payment flows through xRapid to provide liquidity solutions for their cross-border payments. MoneyGram, IDT, Cambridge Global Payments, Currencies Direct and Viamericas have piloted xRapid.

As of January 19, 2019, Ripplenet had approximately 200 customers. In addition, Ripple stated that it had observed increased demand for customers who were using XRP to access on-demand liquidity.

### B. What is the level of user and developer activity?

As noted above, the *rippled* code is open-source and published on GitHub, and the version of that code in C++ lists 11,866 commits, 85 releases and 63 contributors.

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repository submitted by a user and accepted or rejected by the repository's collaborators. A repository is a project folder, which contains all of the project files and stores the revision history of each file.

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Since January 1, 2018, daily transaction volumes have ranged from a low of 226,025 transactions (on October 21, 2018) to a high of 1,658,944 transactions (on January 16, 2018).<sup>7</sup> The number of transactions on January 24, 2019 was 636,075.

Since January 1, 2018, the daily number of payments has ranged from a low of 8,484 on June 17, 2018 to a high of 135,541 on January 5, 2018. The number of payments on January 24, 2019 was 43,679 payments.<sup>8</sup>

Since January 1, 2018, the daily number of XRP Ledgers has ranged from a low of 21,032 (on December 27, 2018) to a high of 26,999 on January 19, 2019. The number of XRP Ledgers on January 24, 2019 was 25,576.<sup>9</sup>

Since January 1, 2018, the daily amount of transaction fees (in XRP) has ranged from a low of 1.63 XRP on December 25, 2018 (with an average fee of 0.0011 XRP) to a high of 106,349 XRP on May 22, 2018 (with an average fee of 0.1278 XRP). The transaction fees on January 24, 2019 were 43.68 XRP (with an average fee of 0.0010 XRP).<sup>10</sup>

As of October 2018, xRapid, which facilitates cross-border transactions by sourcing XRP, became commercially available. xRapid is currently being implemented by three customers, MercuryFX, Cuallix and Catalyst Corporate Federal Credit Union. According to Ripple, MercuryFX will deploy xRapid in the Europe to Mexico corridor, while Cuallix currently focuses remittance corridor from the U.S. to Mexico, and Catalyst Corporate Federal Credit Union will leverage the XRP digital asset for cross-border transfers on behalf of its 1400+ member credit unions.

**C. For mined virtual currency or an asset that functions as a medium of exchange, what are the hash rates and/or transaction volumes?**

As noted above, since January 1, 2018, daily transaction volumes have ranged from a low of 226,025 transactions (on October 21, 2018) to a high of 1,658,944 transactions (on January 16, 2018).

<sup>11</sup> The number of transactions on January 24, 2019 was 636,075.

**12. Ownership**

**A. Total amount of asset**

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<sup>7</sup> <https://xrpcharts.ripple.com/#/metrics>

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> <https://xrpcharts.ripple.com/#/metrics>



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A total of 100B XRP was created on the genesis block; no new XRP can be created. Since XRP is burned when it is used as a transaction fee, the total amount of XRP in existence is now approximately 99.99B XRP. According to Coinmarketcap, there are 41,040,405,095 XRP in current circulation.

XRP is measured in drops, or increments of 0.00001 XRP.

**B. Percentage of ownership by issuer or affiliates**

Ripple currently owns about 60B XRP. On May 16, 2017, Ripple announced that it was placing 55B XRP by the end of 4Q17 into a series of escrows, which is a smart contract that is deployed on XRP Ledger, to provide a level of supply predictability. The escrow will establish 55 contracts of 1 billion XRP each that will expire on the first day of every month from months 0 to 54. Ripple indicated that it would sell this released XRP to institutional investors, and that it may also use XRP for incentives to market makers to offer tighter spreads for payments. Since the XRP escrow exists on the XRP Ledger, it is controlled by validators, as with any other transaction that occurs on the XRP Ledger. Any XRP that is not used will be returned to the escrow, and will be placed into a new escrow to release in the first month in which no escrow currently releases, e.g., month 55. The escrows are publicly available on the XRP Ledger. In announcing the escrow in May 2017, Ripple stated that it has sold, on average, 300M XRP per month for the past 18 months. Assuming that 50% of released XRP is used per month, this creates a 30-year distribution curve for the total supply of XRP.

On a quarterly basis, Ripple publicly announces the amount of XRP that has been released from escrow and that it has sold for that quarter. For example, in 3Q18, Ripple announced that 3 billion XRP was released out of escrow (1 billion each month), and that 2.6 billion XRP was subsequently put into new escrow contracts. In that quarter, Ripple sold \$65.27M of XRP, and XRP II, LLC (a subsidiary and registered MSB) sold \$98.06M of XRP in institutional direct sales, for a total of \$163.33M million worth of XRP in Q3. According to Ripple, these sales accounted for 0.43% of global XRP volume.

Similarly, in 2Q18, 3B XRP was released from escrow, of which 2.7B was returned to escrow. In that quarter, Ripple sold \$56.66M XRP in programmatic sales, which accounted for 0.125% of global XRP volume while XRP II, LLC sold an additional \$16.87M XRP in direct sales, for a total of \$73.53M of XRP sold in that quarter.

**C. Total number of holders**

Not available.

**D. Percentage of ownership by top 100 holders**

Not available.



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**13. Regulatory and Governmental Actions****FinCEN / USAO action**

In May 5, 2015, the Financial Crimes Enforcement Network (FinCEN) announced that it had levied a fine of \$700,000 on Ripple and XRP II, LLC for violating various elements of the Bank Secrecy Act (BSA) by acting as a money services business (MSB) and selling XRP without registering with FinCEN, and by failing to implement and maintain an adequate anti-money laundering (AML) program designed to protect its products from use by money launderers or terrorist financiers. XRP II later assumed Ripple Labs' functions of selling virtual currency and acting as an MSB. FinCEN found that XRP II willfully violated the BSA by failing to implement an effective AML program, and by failing to report suspicious activity related to several financial transactions.

This action was undertaken in connection with the U.S. Attorney's Office for the Northern District of California, which also entered into a settlement agreement with Ripple Labs and XRP II, LLC. In that settlement, the companies resolved possible criminal charges and forfeited \$450,000. The \$450,000 forfeiture in that action was credited to partially satisfy FinCEN's \$700,000 civil money penalty.

Both actions were accompanied by an agreement by Ripple and XRP II to engage in remedial steps to ensure future compliance with AML/CFT obligations, as well as enhanced remedial measures. Among these steps were agreements to only transact XRP and "Ripple Trade" activity through a registered MSB; to implement and maintain an effective AML program; to comply with the Funds Transfer and Funds Travel Rules; to conduct a three-year "look-back" to require suspicious activity reporting for prior suspicious transactions; and a requirement that the companies to retain external independent auditors to review their compliance with the BSA every two years up to and including 2020. Pursuant to the agreement, Ripple Labs is also undertaking certain enhancements to the Ripple Protocol to appropriately monitor all future transactions.

**Civil Suits**

In 2018, four separate class actions were filed against Ripple Labs, Inc. and XRP II in state court in California by plaintiffs Coffey (May 3, 2018), Zakinow (June 5, 2018), Oconer (June 27, 2018), and Greenwald (July 3, 2018). The Coffey action was voluntarily dismissed by the plaintiff in August 2018. On November 7, 2018, Ripple removed the remaining three actions to the United States District Court for the Northern District for California.

The four cases allege that the sale of XRP constituted an unregistered sale of securities in violation of the Securities Act and under California state securities law. The actions seek monetary damages and rescission. Among other things, the complaints allege that XRP is highly centralized, e.g., there are a small number of Ripple-approved validators that control validation of the XRP Ledger; Ripple controls the *rippled* code and must approve proposed changes to the code; Ripple affirmatively sought to list XRP on multiple exchanges; and Ripple controls the distribution and, by extension, the market for XRP. The complaints also cite multiple statements made by Ripple representatives and employees about the prospects of XRP and Ripple which, according to the complaints, indicate that XRP was marketed as an investment.

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**14. Timeline of events**

- September 2012: OpenCoin is founded
- January 2013: Genesis block of XRP Ledger
- September 26, 2013: OpenCoin is re-named Ripple Labs, Inc.
- May 5, 2014: Ripple announces that Fidor Bank AG is the first bank to integrate the Ripple protocol into its transaction infrastructure, which should offer customers faster and more affordable money transfer options.
- September 24, 2014: CBW Bank is one of the first U.S. banks to announce its use of the Ripple protocol for global payments
- May 5, 2015: FinCEN announces that it has fined Ripple and its wholly-owned subsidiary, XRP II, LLC \$700,000 for operating as an unregistered MSB. In addition, the U.S. Attorney's Office for the Northern District of California announced a settlement and a forfeiture of \$450,000, which was credited towards the \$700,000 penalty.
- May 19, 2015: Ripple announces that it has closed a \$28M Series A funding round, with investors include the venture arms of CME Group and Seagate Technology
- September 6, 2015: Ripple Labs, Inc. is re-named Ripple.
- June 13, 2016: Ripple announces that it has received a BitLicense to sell and custody XRP for institutional investors and financial institutions in New York
- June 22, 2016: Ripple announces that the addition of seven financial institutions to its network: Santander, UniCredit, UBS, ReiseBank, CIBC, National Bank of Abu Dhabi (NBAD), and ATB Financial.
- September 15, 2016: Ripple raises \$55M in Series B funding from investors including Standard Chartered, and Accenture Ventures.
- May 16, 2017: Ripple announces its plan to place 55B of XRP into escrow
- May 18, 2017: Ripple announces that it has expanded its partnership with BitGo to list XRP on Bitso, Coinone, bitbank, and BuyBitcoin. According to Ripple, more listing venues increases the liquidity of XRP, meaning the cross-border payments become easier for financial institutions to make, especially in emerging markets.

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October 10, 2017: Ripple announces that more than 100 financial institutions have joined RippleNet.

April 25, 2018: Ripple announces that Ripple and XRP II, LLC have sold \$167.7M of XRP in 1Q18, representing 0.095% of XRP that was traded globally in 1Q18. Of the 3B XRP that was released from escrow in Q1, 2.7 billion XRP was put back into new escrow contracts for months 56, 57 and 58.

April 26, 2018: Ripple announces five new customers for its xVia API payment mechanism: FairFX, Exchange4Free, RationalFX, UniPAY and MoneyMatch.

May 3, 2018: Coffey class action filed in California, alleging that the sale of XRP constituted an unregistered sale of securities in violation of the Securities Act.

May 10, 2018: Ripple announces pilot results for xRapid.

June 5, 2018: Zakinow class action filed in California.

June 27, 2018: Oconer class action filed in California.

July 3, 2018: Greenwald class action filed in California.

July 24, 2018: Ripple announces that Ripple and XRP II, LLC have sold a total of \$73.53M of XRP sold in that quarter, and that 2.7B of the 3B XRP released from escrow that quarter was returned to escrow.

October 1, 2018: Ripple announces that xRapid, which facilitates cross-border transactions by sourcing XRP, is commercially available and is being implemented by three customers.

October 25, 2018: Ripple announces that Ripple and XRP II, LLC have sold \$163M of XRP in 3Q18, representing 0.43% of global XRP volume, and that 2.6B of the 3B XRP that was released from escrow that quarter was returned to escrow.

November 7, 2018: Ripple removes class actions to the United States District Court for the Northern District of California

## 15. Links to Relevant Documents

<https://ripple.com/insights/how-we-are-further-decentralizing-the-ripple-consensus-ledger-rcl-to-bolster-robustness-for-enterprise-use/>

<https://developers.ripple.com/xrp-ledger-overview.html>

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<https://developers.ripple.com/consensus.html>

<https://developers.ripple.com/rippled-server-modes.html>

[https://ripple.com/files/rippenet\\_brochure.pdf](https://ripple.com/files/rippenet_brochure.pdf)

<https://developers.ripple.com/technical-faq.html>

<https://developers.ripple.com/fee-voting.html>

<https://ripple.com/category/dev-blog/>

<https://developers.ripple.com/transaction-cost.html#specifying-the-transaction-cost>

<https://github.com/ripple/rippled>

<https://ripple.com/dev-blog/decentralization-strategy-update/>

<https://ripple.com/dev-blog/flow-amendment-open-voting/>

<https://ripple.com/insights/ripple-receives-new-yorks-first-bitlicense-institutional-use-case-digital-assets/>

[https://ripple.com/ripple\\_press/ripple-labs-announces-fidor-bank-ag-as-first-bank-to-use-the-ripple-protocol/](https://ripple.com/ripple_press/ripple-labs-announces-fidor-bank-ag-as-first-bank-to-use-the-ripple-protocol/)

[https://ripple.com/ripple\\_press/ripple-labs-closes-28-million-series-a-funding-round/](https://ripple.com/ripple_press/ripple-labs-closes-28-million-series-a-funding-round/)

[https://ripple.com/ripple\\_press/financial-institutions-join-ripples-global-network/](https://ripple.com/ripple_press/financial-institutions-join-ripples-global-network/)

[https://ripple.com/ripple\\_press/ripple-raises-55-million-series-b-funding/](https://ripple.com/ripple_press/ripple-raises-55-million-series-b-funding/)

[https://ripple.com/ripple\\_press/xrp-liquidity-increase-listings-six-new-exchanges/](https://ripple.com/ripple_press/xrp-liquidity-increase-listings-six-new-exchanges/)

[https://ripple.com/ripple\\_press/ripples-blockchain-network-now-100-strong/](https://ripple.com/ripple_press/ripples-blockchain-network-now-100-strong/)

<https://www.fincen.gov/news/news-releases/fincen-fines-ripple-labs-inc-first-civil-enforcement-action-against-virtual>

<https://static1.squarespace.com/static/5938711a9de4bb74f63b4059/t/5aebc4112b6a28e0ef4a0381/1525400594617/Coffey+v+Ripple+Labs+Complaint.pdf>

<https://www.courthousenews.com/wp-content/uploads/2018/07/Cryptocurrency.pdf>

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<https://assets.documentcloud.org/documents/4571794/Oconer-v-Ripple-6-27-18.pdf>

<https://images.law.com/content/uploads/documents/403/16554/ZakinovvRipple.pdf>

[https://www.scribd.com/document/392778932/Ripple-Consolidation-Removal-App#from\\_embed](https://www.scribd.com/document/392778932/Ripple-Consolidation-Removal-App#from_embed)

<https://ripple.com/faq/>

[https://ripple.com/ripple\\_press/ripple-reports-positive-results-xrapid-pilots/](https://ripple.com/ripple_press/ripple-reports-positive-results-xrapid-pilots/)

[https://ripple.com/ripple\\_press/ripple-highlights-record-year-xrapid-now-commercially-available/](https://ripple.com/ripple_press/ripple-highlights-record-year-xrapid-now-commercially-available/)

<https://ripple.com/dev-blog/explanation-ripples-xrp-escrow/>

<https://ambcrypto.com/xrp-ledger-decentralization-grows-as-ripple-controls-less-than-30-of-validator-nodes-on-the-unl/>

<https://ripple.com/insights/q3-2018-xrp-markets-report/>

<https://ripple.com/insights/ripple-highlights-record-year-xrapid-now-commercially-available/>

<https://ripple.com/insights/q2-2018-xrp-markets-report/>

<https://ripple.com/insights/the-inherently-decentralized-nature-of-xrp-ledger/>

<https://ripple.com/insights/difference-ripple-xrp/>

<https://ripple.com/insights/ripple-to-place-55-billion-xrp-in-escrow-to-ensure-certainty-into-total-xrp-supply/>

<https://ripple.com/insights/q1-2018-xrp-markets-report/>

<https://ripple.com/insights/xvia-opens-new-doors-in-emerging-markets/>

<https://ripple.com/insights/first-pilot-results-for-xrapid/>

<https://ripple.com/insights/q4-2017-xrp-markets-report/>

<https://vl.ripple.com/>

<https://vl.coin.com/>

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<https://ripple.com/use-cases/digital-asset-exchanges/>

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**Attachment B -- Asset scorecard****1. Howey Test****DALG Scorecard**

Instructions: For each response, add up the assigned values in the Howey Prong columns to determine the total score for that prong. A score greater than 100 for any given prong indicates that the prong is likely met.

**Rating Scale (1-5):**

1	3 prongs have scores below 100
2	2 prongs have scores below 100
3	1 prong has a score below 100, and no prong is above 150
3.5	3 prongs are 100 or greater, and one or more prongs is above 150
4	All 4 prongs are 100 or greater, but no prong is above 150
4.25	All 4 prongs are 100 or greater, and no more than one prong is above 150
4.5	All 4 prongs are 100 or greater; two prongs are above 150, or one prong is above 200
5	All 4 prongs are 100 or greater; three prongs are above 150, or one or more prongs are above 250



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Digital Asset: XRP

Score: 4.25

Digital Asset Review Questions		Answers	Howey Prongs			
			Investment of Money	Common Enterprise	Reasonable Expectation of Profits	Efforts of Others
1.	Did purchasers contribute fiat or digital currency in exchange for tokens?	Yes	+100			
		No	0			
		N/A	0			
2.	If the answer to #1 is No, did token holders contribute services or other individual efforts that support the system/network (e.g., proof of work mining) in exchange for tokens?	Yes	-50			-25
		No	0			0
		N/A	0			0
3.	If the answer to #1 is No, did token holders contribute email addresses, KYC, or similar information in exchange for tokens?	Yes	+25			
		No	0			
		N/A	0			
4.	Do token holders share in increases or decreases in value of the token? This could include realizing gains or losses through secondary market trading.	Yes		+100	+40	
		No		0	0	
		N/A		0	0	
5.	Do token holders receive payments or fees (in any form, including additional tokens) as a result of their holding the token (e.g., fees paid by others for using the network)?	Yes		+75	+40	
		No		0	0	
		N/A		0	0	
6.	Did the founders, promoters, or issuer of the token allocate a share of tokens to themselves, either at the issuer-level or for individual founders, promoters, or advisers?	Yes		+50		
		No		0		
		N/A		0		
7.	Does the token provide holders with any voting rights?	Yes		+50		
		No		0		
		N/A		0		

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8.	Will the founders/promoters earn revenues from the system, unrelated to their ownership of the tokens?	Yes		-25		
		No		0		
		N/A		0		
9.	Does the token have consumptive uses or other utility within a network or system, unrelated to any potential profit that can be earned by holding the token as an investment?	Yes			-15	
		No			+100	
		N/A			0	
10.	Is the token necessary for the functioning of the network/system, or could the network/system have been reasonably designed such that another digital asset could have been used (e.g., using Ether as payment instead of a native token)?	Yes			-15	
		No			+50	
		N/A			0	
11.	Does the network or other system encourage consumption of the token or discourage holding the tokens for investment, e.g., by devaluing idle tokens?	Yes			-50	
		No			0	
		N/A			0	
12.	If the value of the token is backed by or tied to another asset (whether fiat or otherwise), is it redeemable 1:1 for that asset? (Answer N/A if not backed by or tied to another asset.)	Yes	-75		-75	
		No	0		0	
		N/A	0		0	
13.	Was any sale of the token marketed by the founders, promoters, or issuer as an investment or providing the opportunity to earn a profit or other form of investment return?	Yes			+100	
		No			0	
		N/A			0	
14.	Was any token sale marketed toward identifiable groups of crypto asset investors, e.g., by promotion on crypto investment enthusiast websites or message boards?	Yes			+25	
		No			0	
		N/A			0	
15.	Was the token sale marketed exclusively toward identifiable	Yes			-75	

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	groups of people who may have an actual interest in using the token for its utility or consumptive use, e.g., residents of developing nations where the network is intended to provide a system for their primary use?	No			+15	
		N/A			0	
16.	Did the founders or issuer use paid promoters to facilitate sales of the token?	Yes			+25	
		No			0	
		N/A			0	
17.	Did earlier purchasers of the token receive a discount as compared to later purchasers?	Yes			+25	
		No			0	
		N/A			0	
18.	In marketing the token, did the founders, promoters, issuer or development team indicate that they would attempt to have the token listed for trading in the secondary market, or have they otherwise engaged in efforts to encourage secondary market making or liquidity?	Yes			+25	
		No			-10	
		N/A			0	
19.	Did the founders, promoters, or issuer raise traditional venture or other equity capital, unrelated to its sale of tokens?	Yes			-10	
		No			+25	
		N/A			0	
20.	Can holders of the token earn additional tokens or other consideration through non-automated active efforts to engage with or improve the system/network, such as by staking?	Yes			+25	-25
		No			0	0
		N/A			0	0
21.	Is the token designed to be "deflationary," such that supply is reduced over time and, all else being equal, value increases?	Yes			+25	
		No			0	
		N/A			0	
22.	Is there an identifiable group of original founders (or persons affiliated with the founders) that the public views as the management or development team behind the token, system, or network?	Yes		+15		+25
		No		-75		-75
		N/A		0		0



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23.	In marketing the token, system, or network, did the founders, promoters, or issuer point to the successful background or other credentials of the management or development team?	Yes				+15
		No				-15
		N/A				0
24.	In marketing the token, did the founders, promoters, or issuer indicate that they intended to engage in further development efforts to improve the network or system, or otherwise enhance the value or operations of the network or system, including by indicating that proceeds from the token sale would, in part, be used for further development or marketing of the network/system?	Yes				+50
		No				-25
		N/A				0
25.	Are proceeds of the token sale invested in other businesses? E.g., use proceeds to fund an investment fund for other businesses	Yes			+20	+20
		No			0	0
		N/A			0	0
26.	At the time of the token issuance, was the network or system (including the use of the token in connection with the network or system) (select one):					
	(a) Not yet operational at all?					+50
	(b) Partially, but not fully operational (e.g., being in "beta" or "bronze age")?					+25
	(c) Fully operational, with no further development necessary to function as proposed?					-75
	(d) N/A					0
27.	If the answer to #[26] is either (a) or (b), is the network or system (including the use of the token in connection with the network or system) currently (select one):					
	(a) Not yet operational at all?					0
	(b) Partially, but not fully operational (e.g., being in "beta" or "bronze age")?					0
	(c) Fully operational, with no further development necessary to function as proposed?					-50

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	<b>(d) N/A</b>					<b>0</b>
28.	Did the founders or promoters indicate in any marketing materials or other documents or statements that they intend to maintain the price of the token, either by "burning," tokens, creating additional tokens, or trading tokens in the secondary market?	Yes				+25
		No				0
		N/A				0
29.	Do the founders, promoters, issuer or development team currently engage in efforts to encourage broader adoption or use of the network/system?	Yes				+40
		No				0
		N/A				0
30.	Do members of the general public have the ability to suggest changes to the system or network?	Yes				-10
		No				+25
		N/A				0
31.	If the answer to #30 is Yes, can any changes to the system/network suggested by the general public be implemented without the founders', promoters', issuer's or development team's consent?	Yes				-20
		No				+15
		N/A				0
32.	Do a material number of parties unaffiliated with founders, promoters, issuer or development team actively engage in development of the network/system?	Yes				-15
		No				+15
		N/A				0
33.	Is the network/system currently actively used for its intended purpose by a material number of parties unrelated to the founders, promoters, issuer or development team?	Yes				-15
		No				+15
		N/A				0
34.	If the founders, promoters, issuer or development team ceased to exist or be involved in the project, would the value of the token be significantly reduced?	Yes				+50
		No				-50
		N/A				0

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<i>Totals:</i>	100	140	165	110
<i>Lowest possible score:</i>	-125	-100	-250	-350
<i>Highest possible score:</i>	100	290	540	345